

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

CHARLES MCGEE,  
PETITIONER,  
V.

22-3123-DWD

CASE NO. 3:21 CR 30034

UNITED STATES OF AMERICA,  
RESPONDENT.

HON. DAVID W. DUGAN  
U.S. DISTRICT JUDGE

PETITIONER'S MOTION FOR SENTENCE  
REDUCTION UNDER SECTION 404(b)  
OF THE FIRST STEP ACT.

COMES NOW PETITIONER, CHARLES MCGEE,  
REG. NO. 30522-509, PRO-SE PER HAINES V.  
KERNER, 404 U.S. 519-520 (1972), BEFORE  
THIS HONORABLE COURT, SEEKING THE  
ISSUANCE OF AN ORDER GRANTING HIM  
A REDUCTION OF HIS SENTENCE PURSUANT  
TO SEC. 404(b) OF THE FIRST STEP ACT OF  
2018.

IN SUPPORT OF THE ABOVE REQUEST THE  
PETITIONER AVERS THE FOLLOWING:

## BRIEF BACKGROUND

1. THIS CASE BEGAN ON OR ABOUT FEBRUARY 11, 2021 WITH THE ARREST OF THE PETITIONER.
2. PETITIONER WAS CHARGED WITH VIOLATING, INTER ALIA, 21 U.S.C. SEC. 841(a)(1) AND SEC. 841 (b)(1)(B)(iii) [COCAINE BASE] AND 18 U.S.C. SEC. 924(c)(1)(A).
3. AFTER PLEADING GUILTY, THE PETITIONER WAS SENTENCED ON OR ABOUT MARCH 29, 2022 TO 120 MONTHS IMPRISONMENT AND FOUR YEARS OF SUPERVISED RELEASE.
4. PETITIONER HAS NOT FILED ANY POST-CONVICTION PETITIONS PRIOR TO THIS MOTION BEING FILED.

## LEGAL ANALYSIS

MANY CIRCUITS, INCLUDING THIS CIRCUIT (UNITED STATES V. NEWBERN, NO. 22-1244 (7<sup>TH</sup> CIR. 2022)), HAVE HELD THAT ONCE A PETITIONER IS DEEMED ELIGIBLE FOR A REDUCTION, THE DISTRICT COURTS MUST CALCULATE THE PETITIONER'S GUIDELINE'S RANGE PRIOR TO DECIDING WHETHER TO GRANT A REDUCTION UNDER SEC. 404(b) OF THE FIRST STEP ACT. ACCORDINGLY, A CORRECT GUIDELINE GUIDELINES CALCULATION IS THE "STARTING POINT" TO ANY SENTENCING PROCEEDING AND "PARAMOUNT" WHEN SENTENCING UNDER THE FIRST STEP ACT.

THE PETITIONER'S SENTENCE WAS LARGELY DRIVEN BY THE CRACK COCAINE GUIDELINE. IF SENTENCED TODAY HE WOULD LIKELY RECEIVE THE BENEFIT OF THE DEPARTMENT OF JUSTICE'S CURRENT POLICY RECOMMENDING THAT JUDGES SENTENCE DEFENDANTS CONVICTED OF CRACK OFFENSES (LIKE THE PETITIONER) WITHOUT REGARD TO THE 18:1 RATIO FOR CRACK/POWDER COCAINE THAT STILL EXISTS IN THE GUIDELINES. IN OTHER WORDS, THE PETITIONER

CONTENDS THAT THE GOVERNMENT WOULD LIKELY AGREE THAT THE PETITIONER WOULD BE SENTENCED UTILIZING A 1:1 RATIO FOR CRACK AND POWDER COCAINE.. ELIMINATING THE DISPARITY WOULD RESULT IN A LOWER GUIDELINE RANGE THAN THE ONE USED WHEN HE WAS ORIGINALLY SENTENCED.

THE GOVERNMENT AGREES THAT THE DEPARTMENT OF JUSTICE SUPPORTS THE ELIMINATING A QUANTIFIABLY UNJUST APPLICATION OF LAW ("EQUAL") ACT, SENATE BILL 79, WHICH WOULD ELIMINATE THE DISTINCTION BETWEEN COCAINE FOR SENTENCING PURPOSES UNDER 21 U.S.C. SEC. 841(b)(1)(A) AND (B).

REDUCTION OF PETITIONER'S CRACK COCAINE  
CONVICTION IS APPROPRIATE AND CONSISTENT  
WITH CURRENT DEPARTMENT OF JUSTICE  
POLICY.

---

PETITIONER AVERS THAT BASED ON THE DEPARTMENT  
OF JUSTICE'S CURRENT POLICY, UTILIZING THE  
1:1 RATIO FOR CRACK AND POWDER COCAINE, IF  
HE WERE SENTENCED TODAY, THE RANGE OF  
HIS SENTENCE WOULD HAVE BEEN ABOUT  
15-21 MONTHS. THIS IS QUITE A REDUCTION  
FROM THE 60 MONTH SENTENCE HE RECEIVED.

THAT SAID, IT IS CLEAR THAT THE PETITIONER  
IS ELIGIBLE FOR A REDUCTION UNDER THE FIRST  
STEP ACT, AND THIS HONORABLE COURT SHOULD  
EXERCISE ITS DISCRETION TO REDUCE THE  
PETITIONER'S SENTENCE CONSISTENT WITH THIS  
MOTION AND THE GOVERNMENT'S POLICY,  
AND THE APPLICABLE GUIDELINE RANGE HAD HE  
BEEN SENTENCED TODAY. SEE: 18 U.S.C. SEC.  
3553(a) (APPLICABLE GUIDELINE SENTENCE IS  
FACTOR TO CONSIDER IN SENTENCING);

UNITED STATES V. HANNIE, 971 F.3d 1145, 1158 & n.16 (10<sup>TH</sup> CIR. 2020) (SECTION 3553(a) FACTORS ARE PERMISSIBLE, ALTHOUGH NOT REQUIRED CONSIDERATIONS WHEN RULING ON A FIRST STEP ACT MOTION).

IN UNITED STATES V. NEWBERN, NO. 22-1244 (7<sup>TH</sup> CIR. 2022), THE SEVENTH CIRCUIT USED CONCEPTION V. UNITED STATES, 142 S.Ct. 2389 (2022) TO BEGIN IT'S REVIEW OF NEWBERN'S DISTRICT COURT DENIAL. THE COURT OF APPEALS REDUCED THE HOLDING IN CONCEPTION TO TWO POINTS, AND THIS INSTANT CASE THE PETITIONER AVERS THAT THESE POINTS SHOULD APPLY HEREIN: FIRST, SUBSTANTIVELY, DISTRICT COURTS RETAIN DISCRETION TO CONSIDER ANY INFORMATION RELEVANT TO THE 3553(a) FACTORS, EVEN THOSE NOT RELATED TO THE NEW CRACK TO POWDER COCAINE RATIO; SECOND, PROCEDURALLY DISTRICT COURTS MUST GENERALLY CONSIDER THE PARTIES' NON FRIVOLOUS ARGUMENTS AND MAKE CLEAR THAT THEY REASONED THROUGH THE PARTIES' ARGUMENTS.

PETITIONER'S REHABILITATIVE EFFORTS AND  
SEC. 3553(a) FACTORS

THE PETITIONER ASSERTS THAT HIS RENAB-  
ILITATIVE EFFORTS AND CLEAN DISCIPLINARY  
RECORD IN THE CUSTODY OF THE BUREAU  
OF PRISONS SUPPORTS A SENTENCE REDUCTION.  
IN HIS INCARCERATION THE PETITIONER HAS  
NOT RECEIVED ANY DISCIPLINARY INCIDENT  
REPORTS. HE IS ENROLLED IN THE  
G.E.D. PROGRAM WHERE HE HAS  
COMPLETED ALL OF THE REQUIREMENTS TO  
BE PROMOTED FROM THE PRE-G.E.D.,  
BASIC G.E.D., TO THE ADVANCE G.E.D.  
LEVELS. HE HAS ENROLLED INTO A  
NUMBER OF FIRST STEP ACT CLASSES  
AND SUBSTANCE ABUSE CLASSES AS WELL.  
THE PETITIONER WILL CONTINUE TO TAKE  
ADVANTAGE OF THE REHABILITATIVE EFFORTS  
AFFORDED TO HIM.

ADDITIONALLY, THE BUREAU OF PRISON HAS  
A FIRST STEP ACT RISK ASSESSMENT SYSTEM

CALLED "PATTERN" WHERE IT DETERMINES  
 THE RISK OF RECIDIVISM OF THOSE IN  
 ITS CUSTODY. THE SCORES RANGE FROM  
 A HIGH LEVEL OF RECIDIVISM TO A  
 MINIMUM LEVEL. THIS IS THE DEPARTMENT  
 OF JUSTICE AND BUREAU OF PRISON'S  
 METHOD OF DETERMINING HOW TO  
 ASSIST THOSE IN THEIR CUSTODY TO  
 REHABILITATE THEMSELVES AND LOWER  
 THEIR PATTERN SCORE TO A LOW OR  
 MINIMUM PATTERN SCORE WHERE THOSE  
 IN CUSTODY WILL EARN "EARNED TIME  
 CREDITS" TOWARDS EARLY RELEASE AND  
 HALFWAY HOUSE. ONLY THOSE WITH LOW  
 OR MINIMUM PATTERN SCORES MAY APPLY  
 THEIR "EARNED TIME CREDITS" TOWARDS  
 EARLY RELEASE. THE PETITIONER, ACCORD-  
 ING TO THIS EXCLUSIVE PATTERN SCORE, IS  
 AT A "LOW" LEVEL OF RECIDIVISM, THUS,  
 FOR THE DEPARTMENT OF JUSTICE AND  
 BUREAU OF PRISON, THE PETITIONER HAS A  
 LOW POSSIBILITY OF RECIDIVATING ONCE HE  
 IS RELEASED.



AS TO THE SEC. 3553(a) FACTORS, THE PETITIONER DOES NOT MAKE LIGHT OF THE NATURE AND SERIOUSNESS OF HIS OFFENSES AND RECOGNIZES THE NEED FOR: JUST PUNISHMENT, PROMOTING RESPECT FOR THE LAW, REFLECTING THE SERIOUSNESS OF THE OFFENSE, DETERRING FUTURE CRIME, AND TO PROTECT THE PUBLIC. HOWEVER, THE PETITIONER'S REDUCTION WILL NOT BE AN IMMEDIATE RELEASE BUT BELIEVES THAT A REDUCTION WILL ELIMINATE THE DISPARITY IN SENTENCE, HAD HE BEEN SENTENCED TODAY.

CONCLUSION

THEREFORE, BECAUSE OF THE ABOVE FACTS AND CASE LAW, THE PETITIONER ASKS THAT THIS HONORABLE COURT GRANT HIS SENTENCE REDUCTION UNDER SECTION 404(b) OF THE FIRST STEP ACT TO 15-21 MONTHS ON THE CRACK COCAINE CHARGE

RESPECTFULLY SUBMITTED,

Charles McGee  
CHARLES MCGEE

DATE: 12/21/22

REG. NO. 30522-509

FBI- TEXARKANA

P.O. BOX 7000

TEXARKANA, TX 75505

## CERTIFICATE OF SERVICE

I, CHARLES MCGEE, REG. NO. 30522-509 DO  
CERTIFY THAT PER 28 U.S.C. SEC. 1746, A  
TRUE COPY OF THIS MOTION FOR SENTENCE  
REDUCTION UNDER SEC. 404(b), WAS PLACED  
INTO THE MAILING SYSTEM OF FCI-  
TEXARKANA ON THE DATE SHOWN BELOW  
USING, FIRST CLASS, U.S. MAIL, PRE-PAID TO:

1. CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
750 MISSOURI AVENUE  
E. ST. LOUIS, IL 62201
2. OFFICE OF U.S. ATTORNEY  
SOUTHERN DISTRICT OF ILLINOIS  
U.S. COURTHOUSE  
750 MISSOURI AVENUE  
E. ST. LOUIS, IL 62201

DATE MAILED: 12/21/22

RESPECTFULLY SUBMITTED,

Charles McGee

CHARLES MCGEE

REG. NO. 30522-509

## FSA Recidivism Risk Assessment (PATTERN 01.03.00)

Register Number: 30522-509, Last Name: MCGEE

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number: 30522-509

Inmate Name

Last.....: MCGEE

First.....: CHARLES

Middle.....:

Suffix.....:

Gender.....: MALE

Risk Level Inmate.....: R-LW

General Level.....: R-LW (31)

Violent Level.....: R-LW (20)

Security Level Inmate: LOW

Security Level Faci...: LOW

Responsible Facility.: TEX

Start Incarceration...: 03/29/2022

## PATTERN Worksheet Summary

Item	- Value	- General Score	- Violent Score
Current Age	54	7	4
Walsh w/Conviction	TRUE	2	0
Violent Offense (PATTERN)	TRUE	5	7
Criminal History Points	4	16	6
History of Escapes	0	0	0
History of Violence	2	2	4
Education Score	EnrolledInGED	-1	-1
Drug Program Status	NoDAPCompletion	0	0
All Incident Reports (120 Months)	0	0	0
Serious Incident Reports (120 Months)	0	0	0
Time Since Last Incident Report	N/A	0	0
Time Since Last Serious Incident Report	N/A	0	0
FRP Refuse	FALSE	0	0
Programs Completed	0	0	0
Work Programs	0	0	0
	Total	31	20





MAIL CLEARED  
US MARSHALS

Mr. Charles McGeel  
#625-509  
TExarkana - TC  
P.O. BOX #7000  
TExarkana, TX 75305

C/o Honorable Clerk of Court  
United States Courthouse  
#750 Missouri Avenue, Room #104  
East St. Louis, IL  
- 62201 -

SHREVEPORT LA 710  
FRI 23 DEC 2022 PM  
Lepel Mail

Lepel Mail



RECEIVED  
DEC 29 2022  
CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS OFFICE